

# From Risk to Reward

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# The 3 Elements of Environmental Risk

1. A Source of Contamination
  - A tank, a spill, the potential for a release
2. Receptors - Who Could Be Exposed to the Source
  - Human or ecological
3. Migration Pathways
  - Features that connect sources to receptors

**Remove any one and the risk is gone.**

# Identifying the Source: The Phase I ESA

A site visit and records review reveals:

- Findings: Evidence of releases or threats of contaminant releases
- Opinions: Do findings present a concern?
- Conclusions: Are concerns a Recognized Environmental Condition (REC)?

# Phase I REC

## Recognized **E**nvironmental **C**ondition

- The presence of hazardous substances or petroleum products...the contaminants.
- Conditions are present that are indicative of past, present or potential contaminant releases into the structure or the environment.

# Remove the Source



# Remove the Pathway



# Remove the Receptor?....Not Likely



# Remove or Reduce Environmental Uncertainty

- Phase I ESA
  - First step, relies on existing information
- Phase II Screening
  - Onsite sampling for big picture presence/absence of contaminants
- Phase II Study
  - Sampling of the horizontal and vertical extent of contamination
- Act 2 Liability Protection
  - Characterize the 3 risk elements to meet State regulations



# What is Act 2 Liability Protection?

- Protection from governmental enforcement and citizen actions for further cleanup.
- No protection from citizen common law damage claims (e.g., negligence, nuisance, trespass, etc.).
- Owners, buyers, sellers, future owners, remediators, developers, and lenders are covered.
- Never expires unless site conditions change.

# Risk To Reward

- Recognize the 3 elements of environmental risk.
- Liability management is a process not just a report.
- Afford yourself the greatest degree of liability protection available consistent with the overall value of the opportunity or project.